

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ROBERT A. VITELLI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ASSET ACCEPTANCE, LLC,	)	
FULTON FRIEDMAN & GULLACE, LLP, and	)	
MIDLAND CREDIT MANAGEMENT, INC.,	)	
	)	
Defendants.	)	

**COMPLAINT**

**INTRODUCTION**

1. Plaintiff Robert A. Vitelli brings this action to secure redress from unlawful collection practices engaged in by defendants Asset Acceptance, LLC (“Asset”), Fulton Friedman & Gullace, LLP (“FFG”), and Midland Credit Management, Inc. (“MCM”). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).

**VENUE AND JURISDICTION**

2. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue and personal jurisdiction in this District are proper because:

- a. Defendants’ collection communications were received by and collection practices impacted plaintiff within this District;
- b. Defendants do or transact business within this District.

**PARTIES**

4. Plaintiff Robert A. Vitelli is an individual who resides in the Northern District of Illinois.

5. Defendant Asset Acceptance, LLC is a limited liability company organized under Delaware law with its principal place of business in Michigan. It does business in Illinois. Its

registered agent and office is CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

6. Defendant Asset Acceptance, LLC is engaged in the business of using the mails and telephone system to collect debts originally owed (if at all) to others.

7. Defendant Asset Acceptance, LLC is a debt collector as defined in the FDCPA.

8. Among other things, Asset Acceptance, LLC files thousands of collection lawsuits in the Illinois courts.

9. Between November 29, 2011 and September 11, 2012, Asset Acceptance, LLC filed 1,000 collection lawsuits in the First Municipal District of the Circuit Court of Cook County, alone.

10. During the same period, Asset Acceptance, LLC filed over 800 collection lawsuits in other Illinois courts.

11. According to the annual report on SEC Form 10-K filed by its parent, Asset Acceptance Capital Corp. for 2010 ("Form 10-K"), at original page 46, legal collections accounted for 44.8% of all collections of Asset, and (*id.*, original pages 12, 44, and 46) that Asset employs "standardized collection methodology".

12. Asset Acceptance, LLC pays less than 5 cents on the dollar for debts. Nationally, "from January 1, 2001 through December 31, 2010, [Asset] purchased 1,182 consumer debt portfolios, with an original charged-off face value of \$43.3 billion for an aggregate purchase price of \$1.1 billion, or 2.57% of face value, net of buybacks." (Form 10-K, original page 1.) Of these, 53.2% were general purpose credit card debts and an additional 15.3% private label credit card debts (*Id.*, original page 5.)

13. Defendant Fulton Friedman & Gullace, LLP is a law firm organized as a limited liability partnership under New York law. It does business in Illinois. It has offices in a number of states, including one at 5 E. Van Buren St, Joliet, IL 60432. Its registered agent is Bradley M. Sayad at that address.

14. Defendant Fulton Friedman & Gullace, LLP is engaged in the business of using the mails and telephone to collect consumer debts originally owed to others.

15. Defendant Fulton Friedman & Gullace, LLP is a debt collector as defined in the FDCPA.

16. Defendant MCM is a Kansas corporation with its principal place of business at 3111 Camino Del Rio N, Suite 1300, San Diego, CA 92108-8875. It does or transacts business in Illinois. Its registered agent and office is Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703.

17. Defendant MCM is a collection agency.

18. Defendant MCM holds a collection agency license from the state of Illinois.

19. Defendant MCM is a “debt collector” as defined in the FDCPA.

20. MCM and Asset are under common ownership. Both are subsidiaries of Encore Capital Group, a publicly traded Delaware corporation, with offices at 3111 Camino Del Rio N, Suite 1300, San Diego, CA 92108-8875.

### **FACTS**

21. Defendants have been attempting to collect from plaintiff an alleged credit card debt incurred for personal, family or household purposes and not for business purposes.

22. Plaintiff is a resident of DuPage County, Illinois.

23. In June 2013, Asset Acceptance, LLC, represented by Fulton Friedman & Gullace, LLP, filed a collection lawsuit against plaintiff Robert A. Vitelli in Will County Circuit Court, seeking \$2,391.08, case 13 SC 4099.

24. On or about July 11, 2013, Mr. Vitelli and Asset Acceptance, LLC, entered an agreed order providing that Mr. Vitelli “shall pay Plaintiff [Asset Acceptance] \$1,300 in monthly payments of \$100 starting 8-1-13 and continuing on the 1<sup>st</sup> of each month thereafter until the \$1,300.00 is paid” and “Defendant waives any claims against Plaintiffs and its attorneys.” (Exhibit A) Payments were to be sent to Fulton Friedman & Gullace, LLP.

25. The agreement did not permit the recovery of any amount in excess of \$1,300.

26. Plaintiff began making the monthly payments and has in all respects complied with the agreed order.

27. On or about December 19, 2013, following Mr. Vitelli's December 2013 payment, Fulton Friedman & Gullace, LLP sent plaintiff the letter attached as Exhibit B, stating that the "balance due" was \$1,035.50.

28. In fact, Mr. Vitelli had made 5 payments and the "balance due" was \$800.

29. Mr. Vitelli made payments of \$100 in January and February 2014 respectively.

30. On or about March 9, 2014, Midland Credit Management, Inc., sent plaintiff the letter attached as Exhibit C.

31. Exhibit C is the first letter plaintiff received from Midland Credit Management, Inc., regarding the debt.

32. On information and belief, Exhibit C is the first letter Midland Credit Management, Inc., sent plaintiff regarding the debt.

33. Exhibit C states that Mr. Vitelli owes \$753.37.

34. That amount exceeded what Mr. Vitelli actually owed at the time which was \$600.

#### **COUNT I – FDCPA**

35. Plaintiff incorporates paragraphs 1-34.

36. Defendants violated 15 U.S.C. §1692e and 1692f by misrepresenting the amount of the debt in Exhibits B and C. In addition, the misstatement of the amount of the debt in Exhibit C violates 15 U.S.C. §1692g.

37. Generating correspondence overstating the amount owed is misleading because the unsophisticated consumer can be misled into believing that the additional sums are owed as a result of court costs, fees, and other such incidental expenses.

38. Defendants create a false "paper trail" purporting to obligate the consumer to pay

more than is actually owed. Such correspondence can later be used to demand additional sums from the consumer.

39. Section 1692e provides:

**§ 1692e. False or misleading representations [Section 807 of P.L.]**

**A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .**

**(2) The false representation of--**

**(A) the character, amount, or legal status of any debt . . . .**

**(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .**

40. Section 1692f provides:

**§ 1692f. Unfair practices [Section 808 of P.L.]**

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:**

**(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. . . .**

41. Section 1692g provides:

**§ 1692g. Validation of debts [Section 809 of P.L.]**

**Notice of debt; contents**

**(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--**

**(1) the amount of the debt;**

**(2) the name of the creditor to whom the debt is owed;**

**(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;**

**(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and**

**(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. . .**

.

WHEREFORE, the Court should enter judgment in favor of plaintiff and against defendants for:

- (a) Statutory damages;
- (b) Attorney's fees, litigation expenses and costs of suit;
- (c) Such other and further relief as the Court deems proper.

s/ Daniel A. Edelman  
Daniel A. Edelman

Daniel A. Edelman  
Cathleen M. Combs  
James O. Lattuner  
Francis R. Greene  
EDELMAN, COMBS, LATTURNER & GOODWIN, L.L.C.  
120 S. LaSalle Street, 18th Floor  
Chicago, Illinois 60603  
(312) 739-4200  
(312) 419-0379 (FAX)

**NOTICE OF LIEN AND ASSIGNMENT**

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s /Daniel A. Edelman  
Daniel A. Edelman

Daniel A. Edelman  
EDELMAN, COMBS, LATTURNER  
& GOODWIN, LLC  
120 S. LaSalle Street, 18th Floor  
Chicago, Illinois 60603  
(312) 739-4200  
(312) 419-0379 (FAX)

**DOCUMENT PRESERVATION DEMAND**

Plaintiff hereby demands that each defendant take affirmative steps to preserve all recordings, data, documents, and all other tangible things that relate to plaintiff, the events described herein, any third party associated with any telephone call, campaign, account, sale or file associated with plaintiff, and any account or number or symbol relating to them. These materials are likely very relevant to the litigation of this claim. If defendant is aware of any third party that has possession, custody, or control of any such materials, plaintiff demands that defendant request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the defendant.

s /Daniel A. Edelman  
Daniel A. Edelman



# **EXHIBIT A**



STATE OF ILLINOIS )  
 )SS  
 COUNTY OF WILL )

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
 WILL COUNTY, ILLINOIS

Asset

Plaintiff

vs

Robert

Nitelli

Defendant

CASE NO:

13 SC 4099

ALPACAD  
 COURT ORDER

*This matter coming before the court, the parties in  
 agreement and the court hereby fully endorse.*

*IT IS ORDERED:*

1) Defendant shall pay Plaintiff \$1300.00 in monthly payments  
 of \$100.00 since 8-13 and continuing on the 1st  
 of each month thereafter until the \$1300.00 is paid.

2) Defendant waives any claims against Plaintiff and  
 its attorneys.

3) Payments shall be sent to the address below.

Robert Nitelli

Attorney or Party, if not represented by Attorney

Name

ARDC #

BRADLEY SAYAD #6293697

Firm Name

Fulton, Friedman & Gullace, LLP

Attorney for

Attorney for Plaintiff

Address

5 E. Van Buren St., Suite 214

City & Zip

Joliet, IL 60432

Telephone

877-386-5383

Dated:

7-11

2013

Entered:

Judge

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY



# **EXHIBIT B**

# FULTON FRIEDMAN & GULLACE, LLP

COLLECTIONS, CONSULTING & LITIGATION

LICENSED IN AZ, CA, DC, FL, IL, MD, MI, NJ, NY, OH, PA, TN, TX & VA

PO Box 2123  
WARREN, MI 48090-2123

TOLL FREE 877-737-1752  
EXT. 0

December 19, 2013

Re: Asset Acceptance, LLC Assignee of Dell Financial Services /Cit Online Bank  
Original Creditor Acct #: XXXXXXXXXXXXXXX0251  
Fulton, Friedman & Gullace, LLP, Acct #: 13-28168  
Balance Due: \$1035.50

Dear Robert A Vitelli:

This is a reminder that, according to our arrangements, your payment of \$100.00 is due on 01/01/2014. If for any reason you are unable to make your payment or have any questions regarding your Current Balance, please contact me at the phone number listed below.

If payment has already been sent, please disregard this notice.

**This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose.**

Sincerely,

Sean Haggerty  
Collections Team (Non-Attorney)  
Phone: 877-737-1752 Ext. 0  
Fulton, Friedman & Gullace, LLP

Please be advised that our client, Asset Acceptance, LLC, has requested that we include the following message.

**Important Disclosure**

Federal law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop the contact or that you refuse to pay the debt. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there won't be any more contact or that we intend to take a specific action.

If you have a complaint about the way we are collecting this debt, please write to us at PO Box 2123, Warren, MI 48090-2123, email us at [consumercomplaints@fultonfriedman.com](mailto:consumercomplaints@fultonfriedman.com), or call us toll-free at 877-284-7493 between 9:00 am and 5:00 pm Eastern Standard Time, Monday - Friday.

The Federal Trade Commission enforces the Fair Debt Collections Practices Act (FDCPA). If you have a complaint about the way we are collecting your debt, please contact the FTC online at [www.ftc.gov](http://www.ftc.gov); by phone at 1-877-FTC-HELP; or by mail at 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

# **EXHIBIT C**



Midland Credit Management, Inc.

Contact Information: Tel.: (866) 300-8750

Facsimile: (877) 411-6864

PO Box 2121, Warren, MI 48090

Current Owner: Asset Acceptance, LLC

Original Creditor: DELL FINANCIAL SERVICES /CIT ONLINE BANK

Original Account No.: XXXXXXXXXXXXXXXX9251

Internal Legal Account No.: 14-387679

March 9, 2014

Dear ROBERT A VITELLI:

We are pleased to inform you that your account will now be handled directly by Midland Credit Management, Inc. ("MCM"), as servicer for Asset Acceptance, LLC. This means, should you wish to discuss this account, you will need to contact us directly. Our records reflect that you are currently making payments on this account. If your payments are being handled by a 3<sup>rd</sup> party or court officer, please contact us so that we can discuss your situation.

Alternatively, if you are making the payment voluntarily, please contact us in order to ensure that the payment arrangement remains current. This brief conversation will include information on where to send your payments. Additionally, if you prefer to make electronic payments we will be able to establish that process. We are here to help you through the transition. Thank you for understanding, and we look forward to speaking with you. We can be reached at 877-428-7999.

Your Asset account number is XXXXXX7684. When calling us to discuss your account or making a payment, please use the Internal Legal account number of 14-387679.

Sincerely,

Christine DiDio, District Manager  
Midland Credit Management, Inc.  
877-428-7999

**IMPORTANT DISCLOSURES**

**PLEASE SEE REVERSE SIDE FOR ADDITIONAL DISCLOSURES**

**PLEASE UNDERSTAND THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

*Federal law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop the contact or that you refuse to pay the debt. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there won't be any more contact or that we intend to take a specific action.*

*If you have a complaint about the way we are collecting this debt, please write to us at 8875 Aero Drive, Suite 200, San Diego CA 92123, email us at [customerservice@mcmco.com](mailto:customerservice@mcmco.com), or call us toll-free at (800) 265-8825 between 9:00 A.M. and 5:00 P.M. Pacific Standard Time, Monday - Friday.*

*The Federal Trade Commission enforces the Fair Debt Collection Practices Act (FDCPA). If you have a complaint about the way we are collecting your debt, please contact the FTC online at [www.ftc.gov](http://www.ftc.gov), by phone at 1-877-FTC-HELP; or by mail at 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.*

**IMPORTANT DISCLOSURE INFORMATION**

**Calls to and/or from this company may be monitored or recorded.**

The records associated with the DELL FINANCIAL SERVICES /CIT ONLINE BANK account purchased by ASSET ACCEPTANCE, LLC, reflect that you are obligated on this account, which is in default. As of the date of this letter, you owe the amount listed in this letter as \$753.37. **← INCORRECT AMOUNT**

As the owner of this account, but subject to the rights described below ASSET ACCEPTANCE, LLC is entitled to payment of this account. All communication regarding this account should be addressed to MCM the current servicer.

Unless you notify MCM within thirty (30) days after receiving this notice that you dispute the validity of the debt, or any portion thereof, MCM will assume this debt to be valid.

If you notify MCM, in writing, within thirty (30) days after receiving this notice that the debt, or any portion thereof, is disputed, MCM will obtain verification of the debt or a copy of a judgment (if there is a judgment) and MCM will mail you a copy of such verification or judgment.

If you request, in writing, within thirty (30) days after receiving this notice, MCM will provide you with the name and address of the original creditor.

If an attorney represents you with regard to this debt, please refer this letter to your attorney. Likewise, if you are involved in an active bankruptcy case, or if this debt has been discharged in a bankruptcy case, please refer this letter to your bankruptcy attorney so that we may be notified.

Please remember, even if you make a payment within thirty (30) days after receiving this notice, you still have the remainder of the thirty (30) days to exercise the rights described above.

**We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law:**

**IF YOU LIVE IN COLORADO, THIS APPLIES TO YOU:**

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.COLORADOATTORNEYGENERAL.GOV/CA](http://WWW.COLORADOATTORNEYGENERAL.GOV/CA)

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

Midland Credit Management has a Colorado office with the following address and telephone number: 80 Garden Center, Suite 3, Broomfield, CO 80020. Telephone number: (303) 920-4763.

**Only physical in-person payments may be accepted at this office location. All payments made via mail should be sent to the following address: P.O. Box 939033, San Diego, CA 92193**

**IF YOU LIVE IN MASSACHUSETTS, THIS APPLIES TO YOU:**

NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POST MARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO MIDLAND CREDIT MANAGEMENT, INC.

**IF YOU LIVE IN TENNESSEE, THIS APPLIES TO YOU:** This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

**IF YOU LIVE IN CALIFORNIA, THIS APPLIES TO YOU:**

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false